

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JESSICA MARIE HERNANDEZ,

Defendant.

8:13-CR-43

ORDER

This matter is before the Court on the defendant's motion to reduce sentence ([filing 838](#)). The motion requests a sentence reduction based on Amendment 794 to the United States Sentencing Guidelines, which generally clarified the factors to be considered when determining whether a defendant should receive a downward adjustment for a mitigating role in the offense. The defendant's motion will be denied.

Amendment 794, which was effective on November 1, 2015, made no change to the text of [U.S.S.G. § 3B1.2](#). Instead, it made changes and additions to the commentary to § 3B1.2, to provide additional guidance to courts in determining whether a mitigating role adjustment applies. And Amendment 794 was not made retroactive to defendants who had already been sentenced. *See*, [18 U.S.C. § 3582\(c\)\(2\)](#); [U.S.S.G. § 1B1.10\(d\)](#); *see also United States v. Hernandez*, 18 F.3d 601, 602 (8th Cir. 1994).<sup>1</sup>

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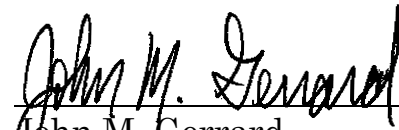
<sup>1</sup> The Court is aware of authority suggesting holding that Amendment 794 applies retroactively to cases on direct appeal. *See United States v. Quintero-Leyva*, 823 F.3d 519, 522–23 (9th Cir. 2016); *accord United States v. Carter*, 662 F. App'x 342, 349 (6th Cir. 2016). But this case is not on direct appeal, and was not on November 1, 2015. Furthermore, while the Ninth Circuit applies a "clarifying" amendment to the Sentencing

In this case, the defendant was sentenced on July 11, 2014, and no appeal was taken, so the judgment was final as of July 25. See [Fed. R. App. P. 4\(b\)\(1\)\(A\)](#). She was sentenced pursuant to the Guidelines in effect at that time and, in fact, received the benefit of a role adjustment pursuant to § 3B1.2. See [filing 412 at 8](#). Because Amendment 794 does not operate retroactively, she is entitled to no further reduction.

IT IS ORDERED that the defendant's motion to reduce sentence ([filing 838](#)) is denied.

Dated this 24th day of October, 2017.

BY THE COURT:

  
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John M. Gerrard  
United States District Judge

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Guidelines retroactively to cases on direct appeal, the Eighth Circuit has rejected that view, holding that only amendments enumerated in § 1B1.10 are to be applied retroactively, even if appellate review has not concluded. [United States v. Dowty](#), 996 F.2d 937, 938 (8th Cir. 1993) (citing [United States v. Caceda](#), 990 F.2d 707, 710 (2d Cir.1993)); see [United States v. Williams](#), 905 F.2d 217, 218 (8th Cir. 1990).